

# Billionaire Battles Authorities on Access to Beach

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■ **Courts:** Self-styled 1-2/11/82 environmental philanthropist tries to overturn easement that allows public on Santa Barbara property. The fight has implications in cases elsewhere.

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As the state moves to secure public access to the beach at hundreds of locations along the California shore, it finds its toughest challenge coming from a surprising quarter—the billionaire environmental philanthropist who recently bought Santa Barbara's daily newspaper.

In twin lawsuits making their way through the California courts, Wendy P. McCaw charges that the California Coastal Commission and Santa Barbara County have illegally combined to create a 500-foot-long public easement on the beach in front of her 25-acre estate. McCaw's appellate court challenges could keep the public off her own beach and also throw into doubt beach access

at hundreds of locations from Oregon to Mexico.

"This is symptomatic of what is happening all along the coast," said Peter Douglas, executive director of the California Coastal Commission. "There are increased conflicts between visitors and residents. People who can afford to live along the coast often have extensive means, and they can make it difficult for public agencies to defend public access rights."

Lawyers for the McCaw trust that owns the estate in exclusive Hope Ranch say they are not against the public's use of beaches. Rather, they say even an environmentalist—as McCaw has styled herself—must object when an overbearing government infringes on private property rights.

"There is a fundamental difference between citizens voluntarily working to improve the environment, and increasing the public's ability to enjoy the environment," said attorney Mark Haddad, "and having the government come and take your property from you on grounds the Supreme Court has [previously] called out-and-out extortion."

The reclusive McCaw was not available for comment. Haddad said that the

dispute is one of principle and that the Stanford Farms Trust—which holds title to the property for McCaw—does not object to visitors walking on the beach.

But Douglas called it "disingenuous and hypocritical" to suggest that the coastal property owners fight beach access for merely theoretical reasons. "What it basically means," Douglas said, "is 'We don't want the great unwashed masses on the beach, in our backyard.'"

The controversy stems from a decades-old policy by the California Coastal Commission of trying to open the coastline to visitors. As it approves development projects, the agency often requires property owners to agree to grant easements for public use—sometimes a pathway from the street to the strand and sometimes a stretch of beachfront, allowing the public to walk above the mean high-tide line and onto private property.

McCaw, the ex-wife of cellular telephone magnate Craig McCaw, bought the Santa Barbara estate in 1995 for \$9.1 million. Her Stanford Farms Trust outbid Disney chief Michael Eisner for the property, the Wall Street Journal reported.

Fifteen years earlier, the home's previous owner went to the Coastal Commission for permission to add a sun room

and deck. To get the agency's approval, the owner agreed to offer a 500-foot-long easement along the beach, which lies 60 feet below the bluff-top estate.

Similar easements have been offered over the years on nearly 1,300 coastal properties. But the Coastal Commission has suffered something of a public access crisis. The vast majority of the easements have gone unclaimed by local governments, meaning no one has stepped up to open the properties, to maintain them and to post signs for the public.

The easement in front of the McCaw property was one of those that remained unsecured.

That changed in 1998. It was then that Santa Barbara County moved to claim more than 70 coastal properties—fearing that, if it did not, 20-year deadlines on the easements would expire and the public's rights would be lost.

A few property owners, including McCaw, sued to block the action.

The challenge relies on a 1987 U.S. Supreme Court decision. In *Nollan vs. California Coastal Commission*, the high court said the state agency cannot infringe on private property rights, unless it can show that a construction project

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somehow limits public access to the beach.

McCaw's lawyers said it is absurd to believe that the addition of a deck and sun room at a house several hundred feet from the sand hampered visitors. "There is just no way the Coastal Commission could show there was any impact on the public's ability to get to the beach from this small home addition," Haddad said.

But Santa Barbara County and Coastal Commission attorneys argued that the courts had no right to intervene in the question now, so many years after the previous owner had agreed to the easement.

"I find it particularly troublesome because this offer to the public has been there for years," said Deputy Atty. Gen. Joe Barbieri. "Any buyer [of the property] would have knowledge of that requirement."

A Santa Barbara Superior Court judge last month agreed, throwing out the McCaw lawsuit as having been brought well after the 60-day period for litigation allowed under the state Coastal Act.

The stakes in the dispute were raised when McCaw's trust in late 1998 filed legal documents to revoke the public access offer. The Coastal Commission, in turn, issued a cease-and-desist order, which could lead to fines of up to \$6,000 a day.

The McCaw trust's loss in court

last month in Santa Barbara was just its latest setback. Last January, a San Francisco Superior Court judge also rejected its suit against the Coastal Commission as being too late. That court later rejected the contention that the commission had abridged McCaw's free speech rights with its cease-and-desist order. The latter issue is now pending in a state appellate court.

Those rulings fit a pattern in which California courts have been unsympathetic to constitutional challenges and repeatedly upheld beach access agreements.

The McCaw trust attorneys acknowledge that the California courts have not been kind to their position. But they note that the U.S. Supreme Court later this year will hear arguments in a Rhode Is-

land case that could open the way for lawsuits against improper private property "takings," even belated ones.

Joseph L. Cole, trustee of the Stanford Farms Trust and publisher of McCaw's Santa Barbara News-Press, said in a written statement that the lawsuits will proceed until the Coastal Commission and Santa Barbara County "stop thumbing their nose at the U.S. Supreme Court."

As to Douglas' criticism that the action targets the masses who merely want to enjoy the beach, Cole responded: "One wonders how Mr. Douglas would feel if, in exchange for permitting him to build a bird feeder in his backyard, the public was given the use of his entire front lawn at will."